

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 931 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?- No

2. To be referred to the Reporter or not? - No

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3. Whether Their Lordships wish to see the fair copy of the judgement? - No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?- No

5. Whether it is to be circulated to the Civil Judge?
- No

MAKDUMALI UMARALI SAIYED

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

MR KC SHAH, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 18/03/96

ORAL JUDGEMENT

The present appeal filed by the original accused-convict requires a recognition merely on a technical contention. The accused was charged for the alleged commission of the offence punishable under Section 7 of the Essential

Commodities Act, 1955. The allegation was that, he was breaching the provisions of the Kerosene (Restriction on Use and Fixation of Price) Order, 1966. The allegation was based upon a further case of the prosecution that, on October 27, 1994, PSI Mr. Mishra of the Traffic Branch, Ahmedabad City, with some other officers and a Forensic Expert was standing near Odhav at Ahmedabad. They were on a drive of the checking of the autorickshaws which were being plied with the fuel Petrol mixed with Kerosene. The autorickshaw bearing Registration No. GRX 7852 being driven by the accused was intercepted. A preliminary sample was drawn, was examined by the Forensic Expert and ultimately, a larger sample of the quantity of 300 ml. was taken, the panchnama was drawn and ultimately, on the receipt of the report from the Forensic Science Laboratory, the accused was chargesheeted. He had pleaded not guilty to the charges levelled against him, but upon appreciation of the evidence on record, he came to be convicted by the learned Special Judge, Ahmedabad, vide orders dated September 13, 1995. These orders are in challenge in the present appeal before me.

As indicated above, the appellant-accused, places in forefront, a technical point, for the reversal of the orders of conviction and sentence. Learned Counsel Mr. Tirmizi, who appears on behalf of the appellant urges that, the very order for the breach of which the appellant has been found guilty and ultimately, has come to be convicted, has been repealed. The learned Counsel places a notification issued by the Ministry of Petroleum and Natural Gas, New Delhi, dated September 2, 1993. Under this notification, the earlier Order of 1966 along with the further Order of 1970 came to be repealed. The learned Counsel urges that, when the alleged offence was committed on October 27, 1994, the Kerosene Order of 1966 was not in force. This contention shall have to be accepted regard being had to the notification dated 2nd September 1993.

With a view to buttress his contention, the learned Counsel places reliance upon a later decision rendered by the very same Court and the very same learned Judge, in Special Criminal Case No. 2 of 1995, in which, this contention came to be accepted, which had ultimately, resulted into the acquittal of the accused, in that case. This position, therefore, has been canvassed by the learned Counsel has been recognised by the very same Court and by the very same Judge in a later judgment which again, relates to the offence which was committed on the very same date.

The learned Government Counsel was not in a position to draw my attention to any other provision of the Act or the Order under which the above said Order of 1966 could have been sustained or could have been given life. In view of this, the contention coming from learned Counsel Mr. Tirmizi, requires to be recognised. The net effect would be that, the appeal shall have to be allowed and the judgment of conviction and sentence as rendered by the Court below shall have to be reversed. I order accordingly. The appeal is allowed. The judgment of conviction and sentence rendered by the Court below is hereby set aside and the appellant-accused is hereby acquitted of the offence for which he came to be convicted and charged. The learned Counsel points out that, the appellant is behind the bars, pending the appeal. He should be set at liberty forthwith, if not required in any other criminal case or proceedings.

In view of the present orders of acquittal, Miscellaneous Criminal Application No. 5106 of 1995 and Miscellaneous Criminal Application No. 725 of 1996 become infructuous. The learned Counsel seeks the permission to withdraw the same, as they have become infructuous. The permission is granted. The said proceedings shall stand disposed of, as having been withdrawn by the learned Counsel.
